

(b) [Reserved]

(c) At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(d) If a proposed transfer of radio facilities is incidental to a sale or other facilities or merger of interests, the showing specified under paragraph (c) of this section shall be submitted and include an additional exhibit that:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

[61 FR 26677, May 28, 1996, as amended at 63 FR 6104, Feb. 6, 1998; 63 FR 68982, Dec. 14, 1998; 65 FR 38327, June 20, 2000; 68 FR 4955, Jan. 31, 2003]

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

(a)(1) The holder of an EA authorization to provide service pursuant to the competitive bidding process and any incumbent licensee of rectangular service areas in the 38.6–40.0 GHz band may enter into agreements with eligible parties to partition any portion of its service area as defined by the partitioner and partitionee. Alternatively, licensees may enter into agreements or contracts to disaggregate any portion of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

(2)(i) Contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned or spectrum disaggregated. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Metropolitan Service Area or Rural Service Area) or county lines are followed. If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(b) The eligibility requirements applicable to EA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

(c) Subsequent to issuance of the authorization for a partitioned service area, the partitioned area will be treated as a separate protected service area.

(d)(1) When any area within an EA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that EA will be subsequently treated and classified as a partitioned service area.

(2) At the time an EA is partitioned, the Commission shall cancel the EA authorization initially issued and issue a partitioned service area authorization to the former EA authorization holder.

(e) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a partitioned service area authorization to the former BTA authorization holder.

(f) The duties and responsibilities imposed upon EA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the

same as applied to the EA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the EA authorization holder.

(i) Licensees, including those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

[63 FR 6104, Feb. 6, 1998, as amended at 63 FR 68982, Dec. 14, 1998; 64 FR 45893, Aug. 23, 1999; 64 FR 59664, Nov. 3, 1999; 67 FR 45379, July 9, 2002]

EDITORIAL NOTE: At 64 FR 59664, Nov. 3, 1999, in §101.56, paragraphs (d)(1) and (2) were redesignated as (d) and (e); however, paragraph (e) already exists and the change could not be made.

§ 101.61 Certain modifications not requiring prior authorization in the Local Multipoint Distribution Service and 24 GHz Service

In the Local Multipoint Distribution Service (LMDS) licensees may add, remove, or relocate facilities within the area authorized by the license without prior authorization. Upon request by an incumbent licensee or the Commission, an LMDS licensee shall furnish the technical parameters, location and coordinates of the completion of the addition, removal, relocation or modification of any of its facilities within the BTA. The LMDS licensee must provide such information within ten (10) days of receiving a written request. This section also applies to 24 GHz licensees that are licensed according to Economic Areas.

[65 FR 59357, Oct. 5, 2000]

§ 101.63 Period of construction; certification of completion of construction.

(a) Each Station, except in Multichannel Video Distribution and Data Service, Local Multipoint Distribution Services, 24 GHz Service, and the 38.6–40.0 GHz band, authorized under this part must be in operation within 18 months from the initial date of grant.

(b) For the 70 GHz, 80 GHz, and 90 GHz bands, the 12-month construction period will commence on the date of each registration of each individual

link; adding links will not change the overall renewal period of the license.

(c) Failure to timely begin operation means the authorization cancels automatically.

(d) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice. See §101.1331(d) for treatment of MAS incumbent site-by-site licenses recovered in EAs.

(e) Requests for extension of time may be granted upon a showing of good cause pursuant to §1.946(e) of this chapter.

(f) Construction of any authorized facility or frequency must be completed by the date specified in the license as pursuant to §1.946 of this chapter.

[61 FR 26677, May 28, 1996, as amended at 62 FR 23165, Apr. 29, 1997; 63 FR 6104, Feb. 6, 1998; 63 FR 68982, Dec. 14, 1998; 64 FR 45893, Aug. 23, 1999; 65 FR 17448, Apr. 3, 2000; 65 FR 38327, June 20, 2000; 65 FR 59357, Oct. 5, 2000; 69 FR 3266, Jan. 23, 2004; 69 FR 16832, Mar. 31, 2004]

§ 101.64 Service areas.

Service areas for 38.6–40.0 GHz service are Economic Areas (EAs) as defined below. EAs are delineated by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce. The Commerce Department organizes the 50 States and the District of Columbia into 172 EAs. Additionally, there are four EA-like areas: Guam and Northern Mariana Islands; Puerto Rico and the U.S. Virgin Islands; American Samoa and the Gulf of Mexico. A total of 175 authorizations (excluding the Gulf of Mexico EA-like area) will be issued for each channel block in the 39 GHz band.

[64 FR 45893, Aug. 23, 1999]

§ 101.65 Forfeiture and termination of station authorizations.

(a) In addition to the provisions of §1.955 of this chapter, a license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to